



# LIQUOR CONTROL DIVISION

## *Frequently Asked Questions*

Montana Department of

## REVENUE

### ***Brewery Licensees:***

#### **Types of Breweries**

***Domestic Nano Breweries*** are very small brewery operations producing less than 100 barrels.

***Domestic Small Breweries or "Microbreweries"*** are breweries that produce over 100 but less than 10,000 barrels.

***Domestic Breweries*** are breweries that produce over 10,000 barrels.

***Foreign Breweries*** are breweries located outside the State of Montana.

Production Levels will determine what you are permitted to do as a licensee:

Less than 100 Barrels	100 – 10,000 Barrels	10,001 or more Barrels
Provide samples without charge between 8 a.m. and 2 a.m. No limit.	Provide samples with or without charge between 10 a.m. and 8 p.m. No more than 48 oz.	Provide samples without charge between 8 a.m. and 2 a.m. No limit.
Sell for off-premises consumption between the hours of 8 a.m. and 2 a.m.	Sell for off-premises consumption between the hours of 8 a.m. and 2 a.m.	Sell for off-premises consumption between the hours of 8 a.m. and 2 a.m.
Sell and deliver beer to wholesalers, licensed retailers (using own trucks/equipment/employees), or the public.	Sell and deliver beer to wholesalers, licensed retailers (using own trucks/equipment/employees), or the public.	Sell and deliver beer to wholesalers, licensed retailers (using own trucks/equipment/employees), or the public.
May not use a common carrier for delivery to the public or retailers.	May not use a common carrier for delivery to the public or retailers.	May not use a common carrier for delivery to the public or retailers.

#### **Sample Room, Hours of Operation and Off-Premises Sales**

##### **Q. Where can a brewery provide samples?**

- A. A brewery can provide product samples only in the sample room as shown on the floor plan which has been submitted and approved by the department.

##### **Q. Are there restrictions on when a brewery may provide samples?**

- A. Yes and No. There is a restriction for a "small brewery" that may only provide samples with or without charge between 10 a.m. and 8 p.m. Patrons may consume their samples until 9 p.m.(16-3-213, MCA) All other domestic breweries must adhere to the statutory requirements of only providing alcohol between the hours of 8 a.m. and 2 a.m.

**Q. Are there limits on how much beer can be sold or served in a sample room for on-premises consumption?**

**A.** Yes. A “small brewery” is limited to no more than 48 ounces to each individual customer during a business day (16-3-213, MCA). All breweries must be aware of the laws and rules relating to service of alcohol to intoxicated persons.

**Q. Can a brewery add a deck or patio to their sample room?**

**A.** Yes, as long as the deck or patio is immediately adjacent to the brewery sample room and can only be accessed from the sample room. The deck or patio must be enclosed in such a manner as to restrict its access and view from the general public on the street or sidewalk.

**Q. Can a brewery sell beer it produces for off-premises consumption in their sample room?**

**A.** Yes. A brewery may sell beer in produces in the original packages to the public for off-premises consumption. This could include 6-packs, individual servings, growlers, kegs. (16-3-214, MCA)

**Q. What is a growler?**

**A.** A growler is any refillable, resealable container that a brewer fills on the brewery premises for off-premises consumption.

**Q. What hours can a brewery sell for off-premises consumption?**

**A.** A brewery must adhere to the statutory requirement that all establishments licensed to sell alcohol be closed between the hours of 2 a.m. and 8 a.m.

**Q. Can a brewery utilize self-service open shelving or reach-in coolers for off-premises sales?**

**A.** Yes, if they have a separate off-premises sales area that is contiguous with the sample room, but is physically separated with walls.

### **Donations, Special Events and Tastings**

**Q. What is the difference between a tasting and a sampling?**

**A.** A tasting is an event where products are sold or given away to the public by a licensed manufacturer or retailer. A sampling is an event where products are provided by the manufacturer of the products to a licensed wholesaler or retailer solely for the purpose of soliciting sales of the product.

**Q. Can a brewery hold a beer tasting at a licensed retail location or catered event?**

**A.** Yes. However, the brewery must sell the product to the retail licensee and only the retail licensee or the licensee’s employees are authorized to sell and serve the alcoholic beverages on their premises. (ARM 42.12.128 & 42.12.313)

**Q. Can a brewer donate product to a public non-profit event?**

**A.** Yes. If the non-profit organization has a Special Permit issued by the Department of Revenue.

**Q. How can a special permittee obtain product from a brewery for a special event?**

**A.** The brewer can deliver directly to the event or they can pick up the product directly at the brewery by producing a copy of the Special Permit.

**Q. Can a brewer donate or give away product to the public?**

**A.** Yes.

**Q. Can a Beer Wholesaler donate a brewer's product to a non-profit event?**

**A.** Yes and No. The wholesaler may not sell the product to the special permittee for less than what the brewer charges the wholesaler and the wholesaler must SELL the product to the special permittee for some consideration. This could be for \$1. If agreed upon, the brewer can reimburse or credit the wholesaler for the product already in inventory.

### **Trade Events and Industry Samples**

**Q. What is the difference between a tasting and a sampling?**

**A.** A tasting is an event where products are sold or given away to the public by a licensed manufacturer or retailer. A sampling is an event where products are provided by the manufacturer of the products to a licensed wholesaler or retailer solely for the purpose of soliciting sales of the product.

**Q. Can a brewer host a trade event?**

**A.** Yes. Brewers are allowed to host trade events where they pour and serve beer samples to licensed retailers and their employees only. These events must be held either at a licensed on-premises retail location or at a location not otherwise licensed that is catered by an on-premises retail licensee. The brewer is allowed to provide all products for this event from their inventory if the product falls into the category of a sample (not purchased by the retailer within the last 12 months, in limited quantities: 3 gallons of beer). However, all product samples must be removed from the retail premises at the conclusion of the event. If the brewer wishes to have samples of products available at the event that do not fall into the category of a sample (products that are regularly available at that retail establishment), they must purchase the product from the retailer at the ordinary retail price.

**Q. Can a brewer provide licensed retailers with beer samples for no consideration?**

**A.** Yes. Brewers may provide licensed retailers with beer samples for no consideration if the product has not been purchased by the retailer within the last 12 months, in limited quantities: 3 gallons of beer. These samples are intended for business purposes only between industry members and may not be sold. Business purposes include negotiating a sale, promoting the product and determining the quality and character of the product.

**Q. Can brewers pour and serve samples at a retail location for the purpose of promoting beverages?**

**A.** Yes and No. Brewers may pour and serve in de minimis quantities samples of beer to on-premises retail licensees and their employees for

the purpose of promoting the beverages. Brewers may not pour and serve samples at an off-premises licensed premises.

### **Labeling**

**Q. Are brewers required to obtain label approval before selling beer?**

A. Yes unless it is not required under TTB. A brewery is required to provide labels for each brand to the department for approval prior to selling or distributing within the state. All label changes must be preapproved for both in-state and out-of-state brewers or importers. (ARM 42.13.203)

**Q. How can brewers provide labels to the department for approval?**

A. Brewers can request approval for labels by registering for Taxpayer Access Point (TAP). Once registered for TAP, brewers can manage their existing labels, request approval for new labels, file and pay taxes, as well as file and pay their annual renewal.

**Q. When are label approvals not required?**

A. When the products are not involved in interstate commerce or when a brewer or importer of malt beverages is not subject to the labeling provisions in the regulations of the Tobacco Tax and Trade Bureau (TTB), United States Department of Treasury as set forth in 27 CFR, as revised on April 1, 2009.

### **Production Threshold and Taxes**

**Q. Is the 10,000 barrel limit calculated on a calendar or fiscal year?**

A. The 10,000 barrel limit is calculated on the state's fiscal year, July 1 through June 30.

**Q. Who tracks the production threshold for each brewery in the state?**

A. The Department of Revenue tracks production thresholds through information provided by the brewers, either through tax returns, renewal applications or written notification. Ultimately the brewer is responsible for notifying the department and its wholesalers in writing by the end of the month in which it exceeds a production threshold. (ARM 42.13.701)

**Q. What if a "small brewery" exceeds 10,000 barrels in nationwide production?**

A. If a "small brewery" exceeds 10,000 barrels in nationwide production, they are no longer allowed to charge for samples of beer in a sample room.  
(16-3-214, MCA)

**Q. If production either drops below 100 barrels or goes over 10,000 barrels, at what point would the brewery have to stop charging for samples?**

A. The brewer must stop charging for samples by the end of the month in which the production threshold changed.

**Q. Who pays the tax on products distributed in the State of Montana?**

- A. Any licensed Montana beer wholesaler or licensed brewery who delivers products to licensed retailers or sells to the public is required to pay the tax on such products.

**Delivery and Distribution**

**Q. Can a brewery sell to retailers?**

- A. Yes. A brewery may sell and deliver beer produced by the brewery from its storage depot or brewery to licensed retailers if the brewery uses its own equipment, trucks and employees to deliver the beer and the beer does not exceed 8 barrels to each retailer a day and total amount per year delivered to retailers does not exceed 10,000 barrels. (16-3-214, MCA)

**Q. Can a brewery use a common carrier to deliver beer to the public or to licensed retailers?**

- A. No. (16-3-214, MCA)

**Q. Can a brewery use a licensed beer wholesaler to deliver beer to a licensed retailer?**

- A. Yes. The brewery and beer wholesaler must have a written agreement of which complies with 16-3-222, MCA on file with the department prior to shipment.

**Brew-On Premises**

**Q. Can a brewery operate a brew-on-premises business?**

- A. Yes. All beer produced at a brew-on-premises business located at a qualified brewery premises is taxable, must be labeled with all information required by 27 CFR part 25, including the government warning and is subject to record keeping and other requirements.

**Miscellaneous Questions**

**Q. Can a brewery sell its product label and recipe to another brewery and the purchasing brewery pay the selling brewery a royalty based on sales?**

- A. Yes. If the purchasing brewer actually produces the beer, bottles and retails the product under their brewery, counting towards the purchasing brewers 10,000 barrel limit.

**Q. Can a brewery bring beer they manufacture to a "Brew Fest" off the licensed premises and serve and sell samples?**

- A. Yes. A brewery may sell and deliver beer to the public. (16-3-214, MCA)

**Q. Can a brewery contract with another brewery to brew their products?**

- A. Yes, however, the contracting brewery may not serve those products manufactured at another facility in their sample room.

**Q. In a contract brewing situation, can the contracted brewer offer those products in their sample room and distribute those products?**

**A. Yes.**

**Q. Can a brewer bottle or can another brewer's product for them?**

**A. Yes.**